



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT BUSIA.

CIVIL CASE NO. 23 OF 2012.

ALFRED JUMA MALOBA.....PLAINTIFF

=VERSUS=

1. XAVIER MASWERE

2. SIMON KANYERE

3. BONFACE ESGERE.....DEFENDANTS.

R U L I N G.

SIMON KANYERE, who is the 2nd Defendant and is hereinafter referred to as the Applicant, filed the Notice of Motion dated 19th November, 2013 through M/S. Bogonko, Otanga & co. Advocates. He prays for an order consolidating Busia HCC. No. 6 of 2009 and Busia PMCC. No. 212 of 2008 with this case. The application is supported by the affidavit sworn by Boaz Otanga Otieno on 19th November, 2013. The application is opposed by Alfred Juma Maloba, hereinafter referred to as the Respondent, through the replying affidavit sworn by his advocates, Wycliffe Obwoye Onsongo on 24th December, 2013.

The 1st and 3rd defendants did not file any papers either opposing or supporting the said application. They also did not attend the court during the hearing. When the matter came up for hearing, on 4th March, 2014, Mr. Otanga and Mr. Onsongo made lengthy submissions for and against the application, on behalf of the Applicant and Respondent respectively. The court has carefully considered the supporting and replying affidavits plus the submissions by both counsel and come to the following findings;

1. That the subject matter in Busia PMCC. No. 212 of 2008 and this particular case is the same.
2. That the prayers in the Busia PMCC. No. 212 of 2008 and this particular case are more or less the same.
3. That the Applicant and his two co- defendants in this case are among the four defendants in Busia PMCC. No. 212 of 2008.
4. That the Plaintiff in Busia PMCC. No. 212 of 2008 was the registered owner of the suit property before she transferred the same to the plaintiff in this particular case.

5. That even though copies of the pleadings in Busia HCC. No. 6 of 2009 were not availed before this court by any of the parties, the information provided to the court during submissions by counsel suggests that the prayers in that suit are different from the prayers in Busia PMCC. No. 212 of 2008 and this case.

That having found as above, the court finds that it would be fair and just that Busia PMCC. No.212 of 2008 be consolidated with this case so as to ensure the two matters are heard expeditiously and issues therein decided in the same file as they are related. The court also finds that Busia HCC. No. 6 of 2009 should continue to be heard on its own for the reasons shown above. The court therefore issues the following orders;-

a. That Busia PMCC. No. 212 of 2008 be and is hereby consolidated with this case for hearing and determination.

b. That the cost of this application will be in the cause.

It is so ordered.

S. M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON DAY OF 31ST OF MARCH, 2014.

IN THE PRESENCE OF;

JUDGE.